IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

SA.No. 420 of 1993(G)

AS.116/1987 of SUB COURT, PAYYANNUR
OS.363/1984 of MUNSIFF COURT, THALIPARAMBA

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APPELLANT:

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1. THARAMMAL PARU, MORAZHA AMSOM AND DESOM, PANNERI, ADOOR PANCHAYAT, TALIPARAMBA TALUK.

2. MANI RAGHAVAN, S/O.PARU, WEAVER, MORAZHA AMSOM AND DESOM, TALIPARAMBA TALUK.

3. MANI BALAN, S/O.PARU, SALESMAN, MORAZHA AMSOM AND DESOM, ADOOR PANCHAYAT, TALIPARAMBA.

4. RUGMINI, D/O.PARU, DO. DO.

5. REENA, DO. DO.

6. REESHA, DO. DO.

BY ADV. SRI M A MANHU, V V NARAYANAN

RESPONDENTS:

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1. MELATH VALAPPIL KUNHAMBU, S/O.KORAN, REPRESENTATIVE OF PANNERI THIYYA SAMUDAYAM, PANNERI MORAZHA AMSOM AND DESOM, P.O. MORAZHA, TALIPARAMBA TALUK.

2. KAKKA BALAKRISHNAN, S/O.KANNAN, SECRETARY, SMASHANA COMMITTEE, PANNERI MORAZHA AMSOM AND DESOM, P.O.MORAZHA, TALIPARAMBA TALUK.

BY ADV. SRI.M.P.ASHOK KUMAR.

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 4-12-2006 ALONG WITH S.A NO. 422 OF 1993, THE COURT ON 11-12-2006 DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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S.A.Nos.420 & 422 of 1993

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Dated this the 11th day of December, 2006.

JUDGMENT

O.S.No.232 of 1984 and O.S.No.363 of 1984 on the file of the Munsiff's Court, Taliparamba gave rise to A.S.No.115 of 1987 and A.S.No.116 of 1987, which were disposed of by a common judgment dated 16-1-1990. That led to a remand order by this Court in C.M.A.No.81 of 1990 and C.M.A.No.136 of 1990. Pursuant to the remand, the appeals have been dismissed by the judgment dated 27-1-1993 thereby confirming the decree granted by the trial court to the plaintiffs in both the suits. Hence, these second appeals by the defendants.

2. The trial court jointly tried the suits on the basis of the endorsements in that regard by the parties, having regard to the intricate connection between the issues involved. The Commission issued by the trial court was executed identifying plots A1, A2 and A3 and plots B1, B2, B3 and B4 respectively shown in Ext.C1 plan as plaint schedule property in O.S.232

of 1984 and O.S.No.363 of 1984 respectively. Defendants thereafter filed additional written statement contending that the plaintiffs do not have any matter of right in relation to the plots, which have been identified.

3. The trial court after a proper construction of the documents and on an appreciation of the entire evidence on record decreed both the suits. It was held that the plaintiffs in O.S.No.232 of 1984 are entitled to a decree of perpetual injunction restraining the defendants therein from entering into the suit property identified as plots A1 to A3 in Ext.C1 plan and from demolishing the mud wall or altering the boundaries or committing any damage and from interfering with the plaintiffs' possession and enjoyment of the said plots. O.S.No.363 of 1984 was decreed for recovery of possession of plots B1 to B4 and for mandatory injunction to remove the boundaries erected by the defendants around plots B2 and B3.

4. The lower appellate court, hearing the

appeals, concluded that the true identity of the properties have been established by Exts.C1 to C3 plan and reports. The lower appellate court also came to the conclusion that reference to documents may not be proper, having regard to the passage of time. However, the lower appellate court remitted the case for reconsideration by an order of remand dated 16-1-1990 with a direction to remit the report to the Commissioner. This Court interfered with that remand order by judgment dated 26-6-1992 in the C.M.Appeals and held that the order of remit was unavailable, going by the findings of the appellate court on merits. The lower appellate court was accordingly directed to reconsider the case on the question of identity afresh and decide the appeals in accordance with law. The said order of remit was passed after specifically holding that the preparation of plan is one mode of identification and the Commissioner would not be able to state about the correctness of the description in the earlier documents vis-a-vis the identification made by the Commissioner particularly when the documents referred to are pretty old, of the years 1933 and 1935.

Following the said order of remit by this Court, the lower appellate court adverted to and considered Exts.C1 to C3 and held that though there may be difference in the boundaries going by Exts.A18 and A17, they cannot be relied on as reflecting the real state of affairs as of now, having regard to the passage of time. It also came to the conclusion that the appellants had not placed any material that could lead to the rebuttal of Exts.C1 to C3. The oral evidence of the Commissioner as P.W.2, including the cross-examination was appreciated by the lower appellate court to come to the conclusion that the Commissioner's report and plan are only to be accepted and acted upon. The aforesaid discussion would show that there is no perversity in the realm of appreciation of evidence. The parties stand concluded by the order of remit in C.M.A.No.81 of 1990 and connected case that on the facts and circumstances of the case in hand, the preparation of plan is one mode of identification. Under such circumstances, I do not find any error in the impugned decree to hold that it is vitiated on any substantial question of law, warranting interference

under Section 100 of the Code of Civil Procedure. These second appeals therefore fail. They are accordingly dismissed. No costs.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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S.A.Nos.420 & 422 of 1993
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JUDGMENT

Dated:11-12-2006